IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.122 OF 1992.

Nandkumar Jagannath Kadam ...Appellant

Vs.

Dharamdas Kalidas Kapadia (Appeal stands dismissed on 7-2-1995)

Dharmendra Dhirajlal Bhanushali ...Respondents

Mr.C.M.Lokesh for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 8,2006.

ORAL JUDGMENT:

1. Submissions of the Advocate for the Appellant were heard yesterday. As none appeared for the Respondent No.2, Appeal was kept today. None appears for the Respondent No.2 today.

2. This Appeal has been preferred by the original Applicant/Claimant seeking enhancement in the compensation awarded by the Motor Accident Claim Tribunal.

3. The accident took place on 3rd November 1982 at Ray Road, Mumbai. While the Applicant was crossing the road he was knocked down by a scooter which is owned by the Respondent No.2. Initially, the Tribunal decided the Claim Petition exparte and awarded compensation of Rs.1 lac to the Appellant. The said award was set aside and after hearing the opponents in the Claim Petition, a sum of Rs.24,182/- was

awarded by way of compensation with interest at the rate of 12% p.a.

4. The learned Advocate for the Appellant has taken me through the record of the case. He pointed out the certificate of Dr.Karkare, Orthopaedic Surgeon issued on 24th June 1986 which was produced by the Appellant and was admitted in the evidence. He pointed out that permanent partial disability has been assessed at 30% by Dr.Karkare. He submitted that the evidence has been led to show that Appellant's earning capacity has been affected. He pointed out that the Applicant was working as a Driver in the State Road transport Corporation. As a result of the handicap suffered by him, State Transport Corporation is giving light duty to the Appellant and as a result he is not receiving night allowance and overtime as well as extra kilometres allowance. He submitted that while quantifying the amount of compensation this aspect has not been considered by the Tribunal. He placed reliance on the decision of the learned Single Judge of this Court reported in 2004(1) T.A.C. 400 (Bom.) (Sambhaji Dashrath Kamble Vs. Maharashtra State Road Transport Corporation Bombay) and submitted that the law laid down by this Court will have to be followed in the present case.

5. I have considered the submissions. The learned Member of the Tribunal has granted a sum of Rs.3036/- on account of

hospital bills, Rs.500/- for special diet and Rs.1,000.00 for the surgery for removing the nail fixed in his leg. He has awarded a sum of Rs.7646.74 on account of actual loss of income and a sum of Rs.12,000/- for the fracture sustained. The case of the Appellants that he was taking treatment in Bhatia General Hospital, Mumbai and from the place of his residence at Chiplun he was required to come all the way to the Bombay and had to spend Rs.900/- per trip for medical treatment. The learned Member of the Tribunal has rejected the claim made on this account on the ground that the receipts for payment of transport charges are not produced. In my view, so far as this aspect is concerned, the learned Member has taken a very hypertechnical view. The Appellant was employed in the Taluka Chiplun, District Ratnagiri. The documentary evidence produced on record shows that the Applicant was under treatment of Bhatia General Hospital, Mumbai. Therefore, the learned Member of the Tribunal could not have disallowed the compensation on this count only on the ground that the actual receipts are not produced. A reasonable amount ought to have been awarded by the learned Member on this account. In my view, a sum of Rs.3,000/- deserves to be awarded on this ground.

6. In the examination-in-chief the Appellant has stated as follows :

. "Before the accident I was working as a driver with

the State Transport. I was getting the salary of Rs.1100/- per month. I could not attend my job for the nine months. I sustained the loss of Rs.7646.74 for which I produce the certificate from the Depot Manager of the State Transport at Chiploon. I joined my duties in June 1983. I work as a driver but I am given light duty. I am given only short trips and not long trips. Consequently, I have lost night allowance and over time and the extra kilometres allowance. That loss is to the tune of Rs.400/- per month. Even now, I am not able to have a long distance driving and I have to do the light duty.

. On 24-6-1986 I got myself examined by dr.V.V.Karkare and he has issued a certificate about my condition and disability. I produce the same.

. Even now, I get pain at the left leg. I cannot run. I cannot sit cross-leged. I get more pain and also swelling during monsoons and winter."

7. Perusal of the cross examination of the Applicant shows that there was hardly any challenge to this version of the Appellant. The certificate issued by Dr.Karkare at exh.13 records that the Appellant cannot effectively use his lower leg for driving. He has stated that this is a permanent feature and is not likely to improve with the time. Permanent partial disability has been assessed at 30%. The Appellant has stated that the loss caused to him by virtue of disability is of Rs.400/- per month as he is loosing the amount by way of the late night allowance and extra kilo meters allowance. However, the Appellant has not led any evidence to substantiate this claim either by examining any Officer of his employer or by producing relevant record.

8. However, no compensation has been awarded to the

Appellant on account of his permanent partial disability of 30%. There is no clear evidence of exact salary of the Appellant on record. However, considering the admitted fact that he was a driver working in the State Transport Corporation, monthly loss can be safely quantified at Rs.150/-. Applying multiplier of 15 as the age of the Appellant was 29 years, the capitalised amount will come to Rs.27,000/-. The Appellant must get additional compensation of Rs.27,000/-.

9. Hence, I pass the following order :

i) In addition to compensation awarded by the impugned Judgment and Award, the Applicant will be entitled to the additional compensation of Rs.27,000/- together with interest at the rate of 9% p.a. from the date of the application till the date of payment.

ii) This amount will be in addition to the amount of Rs.24,183/- granted by the Tribunal together with interest at the rate of 12% p.a. from the date of Application till the date of payment.

iii) The Appellant will be entitled to proportionate costs of the Appeal.

Judge.